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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2015-8672; Amdt. No. 91-340]

RIN 2120-AK72

Prohibition against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight

Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On May 22, 2015, the FAA issued a Notice to Airmen (NOTAM) prohibiting certain flight operations in specified areas of the Sanaa (OYSC) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA found this action necessary to address the hazardous situation created by the risks to U.S. civil aviation from ongoing military operations, political instability, violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen. The prohibition contained in the May 22, 2015 NOTAM was continued in a subsequent NOTAM issued on November 25, 2015 that used a new accountability code for NOTAMs that announce FAA flight advisories or prohibitions for U.S. civil aviation operations in airspace for which the FAA is not the air navigation service

provider. This action incorporates the flight prohibition contained in the November 25, 2015, NOTAM into the Code of Federal Regulations.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Michael Filippell, Air Transportation Division, AFS-220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202-267-8166; email michael.e.filippell@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action prohibits flight operations in the Sanaa (OYSC) FIR, excluding that airspace east and southeast of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from NODMA to PAKER (115500N 0463500E), by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a hazard to persons and aircraft engaged in such flight operations.

II. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures

are “impracticable, unnecessary, or contrary to the public interest.” In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the hazard to U.S. civil aviation that now exists in specified areas of the Sanaa (OYSC) FIR, as described in the Background section of this rule.

III. Authority for this Rulemaking

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA’s authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency’s authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority, because it prohibits the persons subject to paragraph (a) of Special Federal Aviation Regulation (SFAR) No. 115, § 91.1611, from conducting flight

operations in the Sanaa (OYSC) FIR due to the hazard to the safety of such persons' flight operations, as described in the Background section of this rule.

IV. Background

On March 26, 2015 (FDC 5/8051), the FAA issued a NOTAM prohibiting flight operations in the entire Sanaa (OYSC) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons were operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators were foreign air carriers. The FAA took this action because it had determined that there was an unacceptable risk to U.S. civil aviation operating in the Sanaa (OYSC) FIR due to the hazardous situation faced by U.S. civil aviation from ongoing military operations, political instability, violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen.

After issuing the March 26, 2015, NOTAM, the FAA continued to monitor the risks to U.S. civil aviation in the Sanaa (OYSC) FIR. On May 22, 2015, after evaluating available information regarding the safety of certain air traffic routes over the high seas in the Sanaa (OYSC) FIR, including B400, B403 and B404, given current military operations and other threats to U.S. civil aviation in the region, the FAA determined that U.S. civil aviation operations could operate safely in part of the Sanaa (OYSC) FIR. The FAA issued a new NOTAM (FDC 5/5575), which allowed U.S. civil aviation operations to resume in specified areas of the Sanaa (OYSC) FIR. Specifically, the May 22, 2015, NOTAM permitted U.S. civil aviation operations to resume in the Sanaa (OYSC) FIR in that airspace east and southeast of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from

NODMA to PAKER (115500N 0463500E). However, the FAA continued to have serious concerns about the safety of U.S. civil aviation in the rest of the Sanaa (OYSC) FIR, as described in the remaining paragraphs of this Background section, and U.S. civil aviation operations in that airspace west and northwest of the line described in the preceding sentence remained prohibited.

On November 25, 2015, KICZ NOTAM A0036/15 replaced FDC NOTAM 5/5575 (A0019/15). The new NOTAM was published as the FAA transitioned from using Flight Data Center NOTAMs to the new KICZ accountability code for NOTAMS that announce FAA flight advisories or prohibitions for U.S. civil aviation operations in airspace for which the FAA is not the air navigation service provider. The details of the FAA's flight prohibition remained unchanged. This final rule incorporates the prohibition contained in the November 25, 2015, NOTAM into the Code of Federal Regulations.

The FAA has determined that there is an unacceptable risk to U.S. civil aviation operating in the Sanaa (OYSC) FIR, excluding that airspace east and southeast of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from NODMA to PAKER (115500N 0463500E), due to the hazardous situation faced by U.S. civil aviation from ongoing military operations, political instability, violence from competing armed groups, and the continuing terrorism threat from extremist elements associated with the fighting and instability in Yemen.

International civil air routes that transit the specified areas of the Sanaa (OYSC) FIR and aircraft operating to and from Yemeni airports are at risk from terrorist and militant groups potentially employing anti-aircraft weapons, including Man-Portable Air Defense Systems (MANPADS), surface-to-air missiles (SAMs), small-arms fire, and indirect fire from mortars and rockets. Due to the fighting and instability, there is a risk of possible loss of state control

over more advanced anti-aircraft weapons to terrorist and militant groups, and some of these weapons have the capability to target aircraft at higher altitudes and/or during approach and departure and have weapon ranges that could extend into the near off-shore areas along Yemen's coastline. U.S. civil aviation is also at risk from combat operations and other military-related activity associated with the fighting and instability. There is also an ongoing threat of terrorism. Al-Qa'ida in the Arabian Peninsula (AQAP) is active in Yemen and has demonstrated the capability and intent to target U.S. and Western aviation interests.

Attacks against aircraft in flight or Yemeni airports can occur with little or no warning. Various Yemeni airports have been attacked during the fighting, including Sanaa International Airport (OYSN) and Aden International Airport (OYAA), resulting in damage to airport facilities and temporary closure of the airports. In recent years, Sanaa International Airport (OYSN) has been shut down on numerous occasions due to indirect fire and threats of attack against the airport and aircraft at low altitudes during approach and/or departure.

There is also a risk to U.S. civil aviation from potential strategic SAM systems. Some of these air defense SAMs pose a threat to civil aviation out to 40 nautical miles and can reach altitudes above the normal cruising levels for civil air traffic. On March 28, 2015, a probable SAM missile was launched from the vicinity of Al Hudaydah, Yemen along the Red Sea.

Given the uncertainty about when the above-described hazards to U.S. civil aviation will abate sufficiently to allow for safe U.S. civil aviation operations in the specified areas of the Sanaa (OYSC) FIR, this new SFAR follows up on the November 25, 2015, NOTAM and incorporates the flight prohibition contained in the November 25, 2015, NOTAM into the Code of Federal Regulations.

The FAA will continue to actively evaluate the area to determine to what extent U.S. civil aviation may be able to safely operate therein. Adjustments to this SFAR may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind this SFAR as necessary prior to its expiration date.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligation under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

V. Approval Based on Authorization Request of an Agency of the United States

Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 115, § 91.1611, including a U.S. air carrier or a U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo or other operations in the specified areas of the Sanaa (OYSC) FIR, that department, agency, or instrumentality may request that the FAA approve persons covered under SFAR No. 115, § 91.1611, to conduct such operations. An approval request must be made directly by the requesting department, agency, or instrumentality of the U.S. Government to the FAA's Associate Administrator for Aviation Safety (AVS-1) in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality. Requests for approval submitted to the FAA by anyone other than the requesting department, agency, or instrumentality

will not be accepted and will not be processed. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently highly placed within his or her organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request for approval and is committed to taking all necessary steps to minimize operational risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requests for approval must be submitted to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the proposed operations, if approved by the FAA, to commence.

The letter must be sent by the requesting department, agency, or instrumentality to the Associate Administrator for Aviation Safety (AVS-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 115, § 91.1611, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the specified areas of the Sanaa (OYSC) FIR where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while operating in the specified areas of the Sanaa (OYSC) FIR and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (e.g., pre-mission planning and briefing, in-flight, and post-flight).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the Sanaa (OYSC) FIR. Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional operators must be identified to the FAA, and must obtain the necessary operations specification (OpsSpec) or letter of authorization (LOA), as applicable, from the FAA, before such operators commence operations in the specified areas of the Sanaa (OYSC) FIR. Updated lists should be sent to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Michael Filippell for instructions on submitting it to the FAA. His contact information is listed in the “For Further Information Contact” section of this final rule.

FAA approval of an operation under SFAR No. 115, § 91.1611, does not relieve persons subject to this SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft must also comply with the conditions of their certificate, OpsSpecs, and LOAs, as applicable. Operators must further comply with all rules and regulations of other U.S. Government departments and agencies that may apply to the proposed operation, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, and

(b) The operator's agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and

expenses, relating to any event arising from or related to the approved operations in the specified areas of the Sanaa (OYSC) FIR; and

(3) Other conditions that the FAA may specify, including those that may be imposed in OpsSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443 of title 49, United States Code.

If the proposed operation or operations are approved, the FAA will issue an OpsSpec or an LOA, as applicable, to the operator authorizing the operation or operations, and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those contained in the approval letter. The requesting department, agency, or instrumentality must have a contract, grant, or cooperative agreement (or its prime contractor must have a subcontract) with the person(s) described in paragraph (a) of this SFAR No. 115, § 91.1611, on whose behalf the department, agency, or instrumentality requests FAA approval.

VI. Requests for Exemption

Any operations not conducted under the approval process set forth previously must be conducted under an exemption from SFAR No. 115, § 91.1611. A request by any person covered under SFAR No. 115, § 91.1611, for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth previously. In addition to the information required by 14 CFR 11.81, at a minimum, the requestor must describe in its submission to the FAA —

- The proposed operation(s), including the nature of the operation;

- The service to be provided by the person(s) covered by the SFAR;
- The specific locations in the specified areas of the Sanaa (OYSC) FIR where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while operating in the specified areas of the Sanaa FIR and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (e.g., the pre-mission planning and briefing, in-flight, and post-flight phases).

Additionally, the release and agreement to indemnify, as referred to above, will be required as a condition of any exemption that may be issued under SFAR No. 115, § 91.1611.

The FAA recognizes that operations that may be affected by SFAR No. 115, § 91.1611, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to any private exemption requests.

VII. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et*

seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with a base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This SFAR No. 115, § 91.1611, prohibits flight operations by persons described in paragraph (a) in the specified areas of the Sanaa (OYSC) FIR due to the significant hazards to civil aviation described in the Background section of this rule. This regulation incorporates into the Code of Federal Regulations the prohibition on flight operations issued by the FAA in FDC NOTAM 5/5575 on May 22, 2015, and continued in KICZ NOTAM A0036/15, which was issued on November 25, 2015. An FAA review, conducted in April 2015, of 56 part 121,

121/135, 135, 125, 125M, and 91K operators that held an OpsSpec B450 for Yemen, with 49 responding, found just four operators that had overflown Yemen since January 1, 2015; two of the four operators overflew Yemen just once. None of the responding operators had flown into or out of Yemen since January 1, 2015. A search of FAA and Bureau of Transportation Statistics (BTS) operations records in May 2015 showed no additional activity by U.S. civil operators in the Sanaa (OYSC) FIR. Moreover, under this final rule, a U.S. Government department, agency, or instrumentality may apply on an operator's behalf for FAA approval to conduct operations under a contract or subcontract, grant, or cooperative agreement with that department, agency, or instrumentality. Accordingly, the FAA believes the incremental costs of this final rule will be minimal. These minimal costs will be exceeded by the benefits of avoiding the deaths or property damage that could result from a U.S. operator's aircraft being shot down (or otherwise damaged) while operating in the specified areas of the Sanaa (OYSC) FIR.

In conducting these analyses, FAA has determined that this final rule is a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that executive order. The rule is also "significant" as defined in DOT's Regulatory Policies and Procedures. The final rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, "RFA"), 5 U.S.C. 601 *et seq.*, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the

objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Based on the above-referenced FAA review and additional FAA check of FAA and BTS operations records, the FAA finds the rule will impose no more than minimal costs. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of

standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect U.S. civil aviation from a hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of this SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5-6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that this rule would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

IX. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA’s Regulations and Policies web page at http://www.faa.gov/regulations_policies; or
- Accessing the Government Publishing Office’s web page at <http://www.fdsys.gov>.

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. In part 91, subpart M, add § 91.1611 to read as follows:

§ 91.1611 Special Federal Aviation Regulation No. 115—Prohibition Against Certain Flights in Specified Areas of the Sanaa (OYSC) Flight Information Region (FIR).

(a) Applicability. This Special Federal Aviation Regulation (SFAR) applies to the following persons:

- (1) All U.S. air carriers and U.S. commercial operators;
- (2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and
- (3) All operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

(b) Flight prohibition. Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Sanaa (OYSC) Flight Information Region (FIR), excluding that airspace east and southeast of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from NODMA to PAKER (115500N 0463500E).

(c) Permitted operations. This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Sanaa (OYSC) FIR in that airspace west and northwest of a line drawn direct from KAPET (163322N 0530614E) to NODMA (152603N 0533359E), then direct from NODMA to PAKER (115500N 0463500E), provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person subject to paragraph (a)), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) Emergency situations. In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) Expiration. This SFAR will remain in effect until January 7, 2018. The FAA may amend, rescind, or extend this SFAR as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on December 24, 2015.

Michael P. Huerta,

Administrator.

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